

JAN 18 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

RAYMOND W. CLANTON

LOREN F. SELZNICK

For Construction Permit
for a new FM Station on
Channel 279A in El Rio,
California

) MM Docket No. 93-87
)
) File No. BPH-911216MC
)
) File No. BPH-911216MD
)
)
)
)

To: Administrative Law Judge
John M. Frysiak

OPPOSITION TO PETITION FOR LEAVE TO AMEND

Miller & Miller, P.C.
P. O. Box 33003
Washington, DC 20033

January 18, 1994

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SUMMARY

On January 6, 1994, Selznick sought leave to amend the financial portion of her application. Clanton opposes this amendment on numerous grounds: It is an unauthorized reconsideration of a previously-denied amendment. It lacks diligence and results from Selznick's voluntary act. In addition, the amendment is unacceptable because Selznick has not demonstrated she was financially qualified when she filed her application, for she had no documents in hand, her source, Joseph Dailey, did not make a specific funding commitment, no terms of the loan were discussed, she was unaware of his liabilities, and his financial statement from that time does not demonstrate sufficient "net liquid assets" to provide the necessary funds.

The amendment is further deficient as it fails to demonstrate that Selznick would be financially qualified were it accepted. The bulk of the funds are to come from the sale of two cooperative apartments in New York. However, Commission policy is to credit only 2/3 of the appraised value of non-liquid assets. Such reduction reduces the amount available to Selznick to well below the cost estimate contained in the amendment. Also, the amendment calls for a \$40,000 loan from Dailey. The material presented with the amendment does not demonstrate reasonable assurance of such loan. The collateral for the loan is not specified and Dailey's financial statement does not demonstrate sufficient net liquid assets to make the loan.

Other elements of Selznick's funding proposal are also

suspect. She provides no information on when she might receive the \$8,000 inheritance she claims. She neglects about 12% in state and city income taxes which will have to be paid upon withdrawal of her retirement funds.

The numerous deficiencies in Selznick's amendment compel its denial.

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OPPOSITION TO PETITION FOR LEAVE TO AMEND

Raymond W. Clanton, by his attorney, respectfully opposes the petition for leave to amend, filed January 6, 1994 by Loren F. Selznick in the above-captioned proceeding. In support thereof, the following is shown.¹

I. Selznick's amendment is procedurally flawed.

Selznick seeks leave to amend her application by drastically changing her financial proposal from that proposed in her original application. This amendment is substantially the same as Selznick's August 30, 1993, amendment which was rejected by the Presiding Judge. In effect, Selznick is now seeking reconsideration of that ruling, which is prohibited by

¹ The procedural portion of this opposition addresses only the showings presented by Selznick in her January 6 filing to support acceptance of her amendment, for the amendment must by itself demonstrate good cause for its acceptance. Clanton, herein, also takes issue with the sufficiency of Selznick's amendment.

Section 1.301(b) of the rules. Selznick did not seek leave to appeal the denial of her earlier attempt to amend within the five day period allotted, nor at any time thereafter. On this basis alone, there is no reason to consider Selznick's amendment.

Selznick's proposed amendment is procedurally defective for other reasons as well. Section 73.3522(b) of the Commission's rules states that requests to amend an application after designation for hearing must include a showing of good cause. The elements of good cause are stated in Erwin O'Connor Broadcasting Co., 22 FCC 2d 140, 143 (Rev. Bd. 1970). Generally, all elements must be present, or good cause does not exist.

Selznick disputes the need to demonstrate good cause, arguing that her obligation pursuant to Section 1.65 of the rules to update her application requires the filing of the amendment. However, the Commission has made it clear that Sections 1.65 and 73.3522 are complementary, and reliance on one does not negate the need to comply with the other. PrimeMedia Broadcasting, Inc., 3 FCC Rcd 4293 (1988).

One vital element of good cause identified in O'Connor is diligence. Here, not only has Selznick failed to show that her amendment was filed with due diligence, diligence is completely absent.

It is Commission policy that amendments intended to cure a defect in an application be filed within 30 days of the date

the applicant learns of the defect. Imagists, 8 FCC Rcd 2763 (1993), CR Broadcasting, Inc., 5 FCC Rcd 5348 (Rev. Bd. 1990). The financial issues against Selznick were added on September 30, 1993, although Selznick should have known she was not financially qualified when she filed her application. Certainly, she was put on notice that she was not financially qualified by Clanton's Petition to Enlarge Issues, filed September 3, 1993. Even if the time were calculated from the release date of the enlargement order, the instant amendment was filed well beyond the 30-day period allowed. Hence, Selznick made no attempt to amend her application for over three months after the addition of the financial qualifications issues. It was only four working days prior to the commencement of the hearing on the added issues that she filed her instant amendment. Selznick provides no explanation, let alone justification, for this delay.

The sole case which Selznick cites to support her claim for diligence, WCTO, Inc., 99 FCC 2d 395 (Rev. Bd. 1984) is inapposite. There, the presiding judge expressly invited the applicant to file an amendment specifying a new financial plan after the Review Board remanded on a financial issue. The applicant filed its amendment in response to such invitation a mere 16 days later. The Board in WCTO noted that the factual situation was "unique." id at para. 17. Selznick has none of the equities which the Board found in WCTO. Also, more recent cases have held applicants to a higher degree of

diligence, e. g. Tallahassee Minority Partners (Hearing Designation Order), 5 FCC Rcd 7207 (1990). ("To accept amendments after the close of the amendment as of right period would be unfair to the other applicants in this proceeding, who fully complied with our acceptability requirements as of the amendment as of right date.") Otherwise, an applicant would present a moving target which would prejudice other parties' preparation for hearing.

Selznick argues that the diligence requirement should be relaxed as her amendment seeks to cure a disqualifying issue and will preserve the Commission's choice of applicants. However, the Commission's policy has changed. As stated in Imagists, supra, an applicant must now "show that it acted promptly after it discovered, or it should have discovered, the potentially disqualifying deficiency. Clearly, an applicant that sits idly by, either doing nothing or pursuing a course of action that is not likely to resolve the problem expeditiously, lacks diligence." (Footnote omitted.) For these reasons, Selznick's petition to amend must be denied for failure to demonstrate due diligence.

Another of the elements of good cause which must be shown by Selznick is that the amendment is not caused by the voluntary act of the applicant. While Selznick makes such an assertion in paragraph 2 of her petition for leave to amend, she fails to support her assertion. The requirement to advise the Commission of changes in the information provided in the

application, pursuant to Section 1.65 of the rules, does not eliminate nor mitigate the standards of demonstrating good cause for acceptance of an amendment. Clearly, Selznick's decision to restructure her financial plan is completely voluntary. She makes no showing that Mr. Dailey has withdrawn or modified his loan "commitment", or that there are any other circumstances beyond her control. For this reason, good cause to amend does not lie, and her amendment must be rejected.

II. Selznick was not financially qualified when she first filed her application.

Moreover, applicants seeking to amend their financial showing, as is Selznick, must also demonstrate that they were financially qualified ab initio. Aspen FM, Inc., 6 FCC Rcd 1602 (1991). Selznick has not met this requirement.

Selznick's application originally averred it would cost \$360,070 to construct and operate for three months without revenue. To meet this cost, Selznick certified that she had assurance of \$361,000 from Joseph P. Dailey.

Selznick has not demonstrated the sufficiency of her initial budgetary estimate. Her application stated that she requires \$360,070 for construction and three months operation. However, Selznick has not demonstrated that her estimate was for her equipment "in place and ready for service", as required by Form 301 Instructions for Section III, paragraph D. (1)(a). She does not know whether her cost estimate

considered freight charges and sales taxes on her proposed equipment (Selznick deposition, p. 118), both of which are to be considered as part of her costs. Adding even \$1,000 to her cost estimate for these items would bring her costs over the \$361,000 her application indicated she was obtaining from Dailey. On this basis alone, she has not shown her financial certification to be correct.

In addition, the facts show that Selznick had no proper arrangement to borrow money from Dailey in 1991. She states that she first informed Dailey that her estimate was "slightly more than \$350,000", and that Dailey told her he was willing to loan her the entire amount. Later, but still prior to filing her application, Selznick told Dailey, "that he needed to have net liquid assets equal to the total amount of my estimated costs, \$360,070." (amend, pp 7)

It is undisputed that Selznick received no documentation describing the terms and conditions of Dailey's proposed loan before filing her application.² In fact, the terms and conditions of the loan were not even discussed. See Dailey deposition, p. 58, l. 7-10. Selznick concedes as much in paragraph 8 of her amendment. Her deposition testimony

² This is another fact sufficient by itself to support a finding that Selznick was not financially qualified in 1991. In Port Huron Family Radio, Inc., 5 FCC Rcd 4562 (1990), at n. 2, the Commission stated that its policy of not requiring written documentation at time of certification was changed in 1989. Subsequent to the effective date of this change, all applicants would be required to have the necessary written documents on hand. Selznick's application was filed after such effective date.

confirms that they did not discuss what collateral or security he would require for the loan. (p. 157-158) Moreover, Dailey never said he would provide a specific dollar amount of financing. He simply said he would "provide the financing." (Dailey Deposition. p. 84) These are the same problems which led the Commission to find that an applicant lacked assurance of financing when it filed its application in Sunshine Broadcasting, Inc., 6 FCC Rcd 5981 (Rev. Bd. 1991).

A further infirmity in Selznick's showing of initial financial qualification is that she has not shown adequate personal knowledge of Dailey's finances to enable her to reasonably determine that he had sufficient net liquid assets, as defined by the Commission, to make a loan of \$360,070 in 1991. Selznick admits that she did not see Dailey's written financial statement before filing her application. She states that during a long distance telephone call, Dailey pulled up his balance sheet on his computer screen and they went over his "net liquid assets item by item."

However, Selznick did not discuss Dailey's liabilities nor did she have any awareness of them. She does not address discussing Dailey's liabilities on the telephone. Dailey testified in his deposition that the first time Selznick had any information on his liabilities was in August 1993 when he first sent her a copy of his financial statement. See, p. 33, l. 9-24; p. 34, l. 3-7; p. 53, l. 15-p. 54, l. 14; of his deposition.

Moreover, Selznick's use of the term "net liquid assets" in paragraph 7 of her amendment demonstrates that she does not know its meaning. The instructions to Form 301 defines "net liquid assets" as

the lesser amount of the net current assets or of the liquid assets shown on a party's balance sheet, with net current assets being the excess of current assets over current liabilities.

Without knowledge of liabilities, Selznick could not determine "net liquid assets", and she could not have determined that Dailey had sufficient resources to lend her the necessary funds. Sunshine Broadcasting, Inc., supra.

From the definition of "net liquid assets" given above, it is clear that Selznick could not have gone over Dailey's "net liquid assets" with him on the telephone, as she asserts, for his current liabilities are an essential component. Perhaps she means she discussed his "gross" liquid assets. She does not indicate which items from Dailey's balance sheet he discussed with her, nor which items, other than cash, were deemed to be liquid assets. Hence, she provides no justification for her conclusion that Dailey had "net liquid assets" in excess of \$360,070.

The instructions to FCC Form 301, Question 4 prior to the financial certification procedure are most instructive in this matter, and are attached hereto for convenience. The Commission did not change the substantive requirements for financial qualification when it went to the certification process. It merely reduced the amount of material to be submitted with the

application. Thus, the instructions remain a valid statement of Commission policy.

Selznick asserts that Dailey's cash and cash equivalents on hand exceeded \$360,070. However, Dailey's balance sheet shows no "cash equivalents", as that term is expressed on Question 4. "The term and liquid assets refers to items such as cash, or loan value of life insurance, government bonds and publicly traded securities (provided, however, that such securities must be identified by the type of security, name of issuer and the name of the marker or exchange on which traded, at their current market value), or other assets which may be readily used or converted to provide funds to meet the proposed commitments." Even accounts receivable must be "aged" and certified collectible within 90 days, and then only 3/4 will be treated as "liquid". Dailey shows no such cash equivalents.

When the applicant relies upon funding from another person, as Selznick does, the Commission requires that person's financial statement to show "all liabilities and ...current and liquid assets sufficient in amount to meet current liabilities (including amounts payable during the next year on long term liabilities)... (Question 4 b. of instructions to previous version of Form 301) Dailey fails to segregate his current liabilities from his long-term ones on his 1991 financial statement. It shows over one million dollars in total liabilities. The Commission, in the absence

of other information, considers all liabilities to be current. Midwestern Broadcasting Co., Inc., 15 FCC 2d 720, n. 2 (1968). Dailey's total liabilities greatly exceed the amount of his current assets, even if such items as partnership profits and partnership inventory interest are considered liquid assets. Thus, the information on Dailey's 1991 financial statement fails to show that he had sufficient net liquid assets to make the loan to Selznick.

Accordingly, Selznick has not demonstrated that she did in fact have reasonable assurance of financing, under Commission policy, when she filed her application. Aspen FM, supra. This constitutes yet another basis to reject her amendment.

III. Selznick's amendment does not demonstrate her current financial qualifications.

Yet another element of good cause for acceptance of Selznick's amendment is that it not result in enlargement of issues. While acceptance of Selznick's amendment would not require addition of a financial qualifications issue, for one presently exists, her amendment does not demonstrate reasonable assurance of sufficient funds at present to construct her station and operate it for three months without revenue. Her estimate of \$109,460 lacks verification and is facially inadequate. Even assuming that this amount is all that is required, she has not demonstrated its availability.

According to her own liquidity analysis, Exhibit C to her amendment, Selznick has only \$100,700 available from her own

resources. Most will come from the liquidation of her two cooperative apartments which are appraised at \$118,000 and \$86,000, making a total of \$204,000 before payment of mortgages.

However, it is Commission policy not to credit the full appraised value of real estate in determining liquid assets, but rather to discount it by 33 1/3%, in recognition of the fact that the net proceeds received by a seller of real estate are normally lower than fair market value. Port Huron, supra, at n.5. Thus, Selznick's proceeds from the sale of her apartments must be reduced by 1/3 of the \$204,000 claimed in her liquidity analysis (Appendix D to her amendment), or \$68,000. For this reason, Selznick may be credited with no more than \$136,000 (\$204,000 less \$68,000) from the sale of her cooperative apartments. This reduction alone reduces her net liquid assets to \$32,700, which, even when Dailey's claimed loan of \$40,000 is added, gives her only \$72,700, an amount clearly insufficient to meet her claimed costs of \$109,460.

Certain of the other assets claimed by Selznick to be liquid are unproven. She provides no information whatsoever on her claimed \$8,000 inheritance. Her inheritance may not be credited as a liquid asset, for she makes no showing of when she will receive it. It is the applicant's burden to demonstrate that an asset is "liquid."

Selznick indicates approximately \$25,000 available to her from her retirement fund, after subtracting the 20% penalty

for early withdrawal and 32.5% for (federal) taxes. She testified that her taxable income in 1992 was about \$80,000, and that it should be somewhat more for the current year. As a single person, her retirement fund withdrawal would also be subject to 7.59375% in New York State and 4.46% in New York City taxes. See the attached Tax Rate Schedule. Accordingly, her deduction for taxes is insufficient by about 12% and she must subtract about \$5,000 from the amount she states as available from her retirement accounts.

Selznick claims to have present assurance of a loan from Joseph P. Dailey for \$40,000. In an attempt to demonstrate her assurance of Dailey's loan, Selznick supplies his Declaration of August 27, 1993, and portions of his deposition. In his Declaration of the same date, Dailey states the amount of the loan, the repayment terms and interest rate. He does not identify the collateral which will be required.³

It is clear that there are terms behind Dailey's loan commitment which are not specified in the material Selznick presents in her amendment. For example, Dailey stated in his deposition that he would definitely take on the role as an advisor to Selznick with regard to his investment. If she formed a corporation, he would probably want to be on the

³ Clanton noted this deficiency in his opposition to Selznick's earlier amendment.

Board of Directors. p. 77.⁴ There may be other conditions on the loan, for there is nothing from Dailey giving the complete terms. Moreover, Selznick does not indicate her acceptance of even the expressed conditions.

The failure to specify collateral is fatal to acceptance of Dailey's loan commitment. Except in rare cases, not relevant here, the Commission requires financing letters to specify the collateral and insists that the applicant demonstrate it is able to provide it. Scioto Broadcasters, 5 FCC Rcd 5158 (Rev. Bd. 1990), and Peter Joseph Devlin and Patricia Eve Devlin, FCC 90M-2690, released August 27, 1990 (ALJ Frysiak), citing with approval A. P. Walter, Jr., 6 FCC 2d 875 (Rev. Bd. 1991). Also, the current instructions to Form 301 recite that in certifying its financial qualifications, "the applicant is also attesting that it can and will meet all contractual requirements, if any as to collateral, guarantees..." Without knowing what such collateral or guarantees may be, Selznick is unable to certify that she can and will meet them. Accordingly, the Commission may still not credit Selznick with any funds from Mr. Dailey. The conclusion is beyond doubt; Selznick does not currently have financing to cover even her reduced cost estimate.

Dailey's purported loan is suspect for yet another reason. Dailey's 1993 financial statement suffers from many

⁴ This contradicts Dailey's statement on page 65 of his deposition that his commitment to finance Selznick's station was "unconditional. "


of the same infirmities as does his 1991 statement. It does not identify what portion of his \$1,018,921 in liabilities are current. The only clearly liquid asset shown is \$42,800 in cash, which is less than his outstanding bank loan of nearly \$69,000. Dailey's August 1993 financial statement does not adequately show that he has sufficient net liquid assets, as defined by the Commission, to make a \$40,000 loan. For these reasons, Selznick's amendment fails to demonstrate that Dailey has given her reasonable assurance of a loan.

In sum, Selznick's amendment lacks good cause for acceptance. It is effectively a prohibited request for reconsideration of a prior interlocutory ruling; it lacks diligence; and it arises from the voluntary act of the applicant. In addition, Selznick's amendment is incomplete, for it does not adequately explain Selznick's cost estimates, and fails to demonstrate assurance of funds to meet even those estimates. Moreover, it fails to make the necessary showing that her initial financial certification was correct.

Accordingly, Selznick lacks good cause to amend her application as requested. Her Petition for Leave to Amend must be denied.

Respectfully submitted,

RAYMOND W. CLANTON

By 
Jerrold Miller
His Attorney

January 18, 1994

Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033

**FUNDS, PROPERTY, ETC., TO BE FURNISHED BY
PARTIES CONNECTED WITH APPLICANT OR BY OTHERS**

4. Submit as Exhibit No. ____ a statement setting forth the full name and address of each person (whether or not connected with applicant, but including partners, shareholders, or subscribers to capital stock of the applicant) who has furnished or will furnish funds, property, service, credit, loans, donations, assurances, or other things of value, or will assist in any other manner in financing station. For each person (other than financial institutions or equipment manufacturers) who has furnished or will furnish one percent or more of the total of things of value, excluding loans from financial institutions and equipment credit, supply the additional information requested in a. to d. below. For financial institutions or equipment manufacturers, supply the additional information requested in e. below. ("Furnish" or "furnished" as herein used includes payments for capital stock or other securities, loans and other credits, gifts and any other contributions.)

- a. For each person who has agreed to furnish funds, purchase stock, extend credit, or guarantee loans, submit a copy of the agreement by which each person is so obligated, showing the amount, rate of interest, terms of repayment, and security, if any. If no security is required, so state.
- b. For each person (except financial institutions) who has agreed to furnish funds or purchase stock, but who has not already done so, submit a balance sheet or, in lieu thereof, a financial statement showing all liabilities and containing current and liquid assets sufficient in amount to meet current liabilities (including amounts payable during the next year on long term liabilities) and, in addition, to indicate financial ability to comply with the terms of the agreement. The balance sheets submitted should segregate receivables and payables to show the amounts due within one year and those due after one year. The term and liquid assets refers to items such as cash, or loan value of insurance, government bonds and publicly traded securities (provided, however, that such securities must be identified by the type of security, name of issuer and the name of the market or exchange on which traded, at their current market value), or other assets which may be readily used or converted to provide funds to meet the proposed commitments. Current assets such as accounts receivable which result from normal operation of a business, inventory, etc., are not considered as a readily available source of funds without a specific showing that such assets can be relied upon to provide funds to meet proposed commitments. However, if accounts receivable have been "aged" and certified collectible within 90 days by a professional accountant, three-fourths (3/4) of such accounts receivable will be treated as "liquid." If a balance sheet or a financial statement does not clearly indicate liquid and current assets sufficient in amount to meet current liabilities and in addition, sufficient liquid assets to meet the proposed commitments, it should be supplemented by a statement showing the manner in which non-liquid assets will provide such funds. When the applicant relies upon "non-liquid assets," a statement must be submitted showing the extent to which such assets have liens or prior obligations against them. All balance sheets, or financial statements submitted in accordance with this section must be dated. In any event, a mere statement of total assets and total liabilities, or a statement of net worth, is not acceptable under the terms of this section.
- c. Net income after Federal income tax, received for the past two years by each person who will furnish funds, property, service, credit, loans, donations, assurances, or other things of value. (A statement that income tax for the required periods was in excess of a certain specified amount will be sufficient.)
- d. If applicant or any person named in the exhibit has pledged, hypothecated or otherwise encumbered any stocks or other securities for the purpose of providing applicant with funds for construction of the station herein requested, submit a statement explaining each such transaction.
- e. For financial institutions or equipment manufacturers who have agreed to make a loan or extend credit, submit a copy of the document by which the institution or manufacturer has indicated its willingness to provide such loan or credit, showing the amount of loan or credit, terms of payment or repayment of loan, collateral or security required, and rate of interest to be charged. If there are any special requirements such as a moratorium on principal or interest, or a waiver of collateral, etc., it must be shown on the document of credit. In the event such document requires special endorsements or guarantees, a statement from the party or parties required to provide such endorsement or guarantee must be submitted with the document as supporting evidence of their willingness to so provide.

Tax Rate Schedule (Use only to figure your 1992 estimated taxes)

New York State Tax Rates

Married Filing Jointly and Qualifying Widow(er)			Single and Married Filing Separately			Head of a Household		
If line 5 is:			If line 5 is:			If line 5 is:		
over	but not over	The tax is:	over	but not over	The tax is:	over	but not over	The tax is:
\$ 0	\$13,000	4.55% of line 5	\$ 0	\$6,500	4.55% of line 5	\$ 0	\$8,000	4.55% of line 5
13,000	19,000	\$592 plus 5.55% of the excess over \$13,000	6,500	9,500	\$298 plus 5.55% of the excess over \$6,500	8,000	14,000	\$410 plus 5.55% of the excess over \$8,000
19,000	25,000	474 plus 5.55%	9,500	12,500	462 plus 5.55%	14,000	19,000	687 plus 5.55%
25,000		1,011 plus 5.9375%	12,500		669 plus 5.9375%	19,000		1,016 plus 5.9375%

City of New York Tax Rates

Married Filing Jointly and Qualifying Widow(er)			Single and Married Filing Separately			Head of a Household		
If line 5 is:			If line 5 is:			If line 5 is:		
over	but not over	The tax is:	over	but not over	The tax is:	over	but not over	The tax is:
\$ 0	\$14,400	2.51% of line 5	\$ 0	\$8,000	2.51% of line 5	\$ 0	\$8,800	2.51% of line 5
14,400	15,500	\$368 plus 3.68% of the excess over \$14,400	8,000	9,000	\$201 plus 3.68% of the excess over \$8,000	8,800	16,500	\$221 plus 3.68% of the excess over \$8,800
15,500	27,000	390 plus 3.68%	9,000	15,000	232 plus 3.68%	16,500	27,500	303 plus 4.28%
27,000	48,000	412 plus 4.28%	15,000	25,000	451 plus 4.28%	27,500	88,000	974 plus 4.40%
48,000	108,000	569 plus 4.40%	25,000	80,000	879 plus 4.40%	88,000		2,668 plus 4.48%
108,000		6,401 plus 4.48%	80,000		2,419 plus 4.48%			

Amended Estimated Tax Worksheet

(Use only if your estimated tax increases or decreases.)

	New York State	City of New York	City of Yonkers
1. Amended estimated tax			
2. Overpayment from 1991 credited to estimated tax			
3. Balance (subtract line 2 from line 1)			
4. Estimated tax payments made to date			
5. Unpaid balance (subtract line 4 from line 3)			
6. Installment due (divide line 5 by the number of remaining payments due)			

Record of Estimated Tax Payments

Record credits and payments in this table. Keep this record; you will not be receiving notices indicating the amount due each quarter.

Payment	a Date	b Amount	c 1991 Overpayment Credit Applied	d Total Amount Paid and Credited (add b and c)
Voucher				
Voucher				
Voucher				
Voucher				
Total				

BEFORE THE
FEDERAL COMMUNICATIONS COMMUNICATION

Washington, D.C. 20554

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RAYMOND W. CLANTON : File No. BPH-911216MC
LOREN F. SELZNICK : File No. BPH-911216MD
For Construction Permit :
for a new FM Station on :
Channel 279A in El Rio, :
California :
To: Administrative Law Judge :
John M. Frysiak :
----- X

Wednesday, October 13, 1993

Washington, D.C.

Deposition of:

LOREN F. SELZNICK,

an applicant, called for examination by Jerrold D. Miller,
Esquire, pursuant to Notice, at the law offices of Pepper &
Corazzini, 200 Montgomery Building, 1776 K Street, N.W.,
Washington, D.C. 20006, beginning at approximately 2:00 p.m.,
before Judi L. Cody, a Notary Public in and for the District
of Columbia, when were present on behalf of the respective
parties:

1825 K Street, N.W.
Suite 1212
Washington, D.C. 20006

The logo for Sherry Roe & Associates, Inc. features a stylized, thick black 'S' shape on the left. To the right of the 'S', the words 'SHERRY ROE &' are written in a large, bold, serif font. Below this, the words 'ASSOCIATES, INC.' are written in a smaller, all-caps, sans-serif font.

(202) 429-0014
(202) 429-0015

1 MR. MILLER: He served as a
2 consultant. Whether he continues to be an agent or
3 not, I am not going to argue.

4 MR. THOMPSON: Just curious.

5 BY MR. MILLER:

6 Q. Do you know whether the prices listed here
7 include sales tax?

8 A. No, I don't.

9 Q. Do you know whether they include shipping
10 costs?

11 A. No, I don't.

12 Q. Do you know whether they include insurance
13 while in transit?

14 A. No, I don't.

15 Q. Prior to the filing of your application,
16 did you make any determination of whether sales tax
17 would have to be paid on any of the equipment you
18 would be purchasing for your station?

19 A. No, I didn't.

20 Q. Do you know what the sales tax rate was in
21 California in 1991?

22 A. No, I don't, but I am also not certain

1 the money or that someone had promised to provide
2 that money to me.

3 Q. Did you have any understanding that,
4 assuming you were relying on a promise, that the
5 commission had any requirements as to whether or not
6 that promise had to be in writing?

7 A. Yes. I read the instructions and I read
8 them very carefully, and my understanding from the
9 instructions were that if the funds were going to be
10 provided by a bank or lending institution, and
11 whatever else they list there, then the commitment
12 needed to be in writing, and my understanding was
13 that if the funds were to be provided by an
14 individual, that the promise did not have to be in
15 writing.

16 Q. Did you seek to verify that understanding
17 that you have just described with anyone?

18 A. Yes.

19 Q. Prior to filing the application, did you
20 specifically discuss with Mr. Dailey what collateral
21 or security he would require from you should he make
22 the loan for your construction and operating costs?

1 A. It was my understanding that the terms and
2 the rate would be pursuant to the prevailing market
3 at the time of the loan.

4 Q. That's not what I asked. I asked whether
5 you had specific conversations regarding what
6 collateral or security Mr. Dailey would require if
7 he were to make the loan prior to the time you filed
8 your application?

9 MR. THOMPSON: But that assumes a
10 fact not in evidence, which is, that she could have
11 an understanding --

12 MR. MILLER: I just asked if she had
13 discussed it.

14 MR. THOMPSON: -- based on something
15 other than that. Specific discussions on that?

16 MR. MILLER: I asked if she had
17 specific discussions.

18 MR. THOMPSON: My objection stands.
19 The witness can answer the question if she
20 understands it.

21 THE WITNESS: No.

22 BY MR. MILLER: